IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

OP.No. 15252 of 1996(N)

PETITIONER:

ARYA VAIDIASALA EMPLOYEES UNION
(INTUC), REP. BY ITS
GENERAL SECRETARY, KOTTAKKAL.

BY ADV. SRI.P.R.RAMACHANDRA MENON
SRI.C.ANIL KUMAR

RESPONDENTS:
---

1. INDUSTRIAL TRIBUNAL, PALAKKAD.

2. ARYA VAIDIASALA, KOTTAKAL,
REP. BY ITS MANAGING TRUSTEE,
MALAPPURRAM DISTRICT.

R2 BY ADV. SRI.T.R.RAVI
R1 BY GOVERNMENT PLEADER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 22/10/2007, ALONG WITH OP NO. 13996 OF 1996, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: AWARD PUBLISHED IN KERALA GAZETTE DT.2.4.96.

TRUE COPY

PA TO JUDGE

THOTTATHIL B. RADHAKRISHNAN, J.

.....

O.P. Nos.15252 & 13996 of 1996

.....

Dated this the 22nd day of October, 2007.

JUDGMENT

These writ petitions arise from award dated 2.1.1996 of the Industrial Tribunal, Palakkad in Industrial Dispute No.27/1994. The parties are referred to by their status in the award.

2. Union No.1 moved the DLO raising certain complaints that seven workers of the establishment were not being given Higher Grade, but were treated at part with other general workers, though they were technical hands. That dispute was ultimately referred for adjudication.

3. During the pendency of the proceedings before the Tribunal, the Union No.2 applied seeking replacement of Union No.1 from the party array or to include Union No.2 on the array claiming that Union No.1 has merged in Union No.2 and that Union No.2 is entitled to espouse the cause of the workmen whose labour rights are pending consideration. The management opposed to that application by contending that Union NO.1 has not merged in Union No.2 and that Union No.2 is party to a settlement whereby the issue of giving LD grade to persons like the workmen involved in this case are concluded and Union No.2 would not therefore be entitled to agitate on

that issue. It was the specific contention of the management that Union No.2 cannot be permitted to open up the litigation and spread out unnecessary labour unrest, which would ultimately result.

4. It is the specific case of the management that its objections to the impleadment of Union No.2 and its participation in the proceedings before the Industrial Tribunal have not been adverted to and considered and that no specific orders have been issued on the application for impledment of Union No.2. These uncontroverted contentions in the management's writ petition namely, O.P. 13996/1996 find support from the statement in paragraph 3 of the impugned award that no specific order is seen passed on the petition of Union No.2 seeking impleadment and that the matter was proceeded with Union No.2 on the array on the assumption that Union No.2 has been impleaded because the proceedings paper shows Union No.2 as "Impleaded Union".

5. On the teeth of the contention of the management that Union No.2 is party to a settlement whereby the rights of LD Grade workmen are concluded, that issue was not answered against the management by the Tribunal. This means that, not only the entitlement of Union No.2 to agitate the issue remains undecided, but the specific plea that claims of such persons are concluded by settlement was overlooked. The result of this

situation is that the Industrial Tribunal could have further proceeded to answer the dispute referred, in favour of the workmen, only if specific violation of labour rights referable to the statutory provisions or conditions of service are established or any situation being established to be contrary to statutory provisions or constitutional guarantees.

6. Union No.1 has obviously not participated in the proceedings after the reference. This is apparent because even as against the Tribunal's award which is against the interest of three workmen, it is Union No.2 which has filed the writ petition. So much so, it has to be held that the attempt of Union No.2 is only to espouse a cause, of which it is indisputably estopped, in view of Ext.MW25 settlement.

7. With the passage of time, among the four in whose favour the award has been passed, one demitted service by voluntary retirement on falling sick and one of his wards was given employment. Another retired and his daughter was given employment. The other two workers have retired after being given two grades even during the pendency of this writ petition.

8. The reference made by the Government as discernible from the second paragraph of the award is:

"Higher grade to the following 7 Technical Workers

> employed in Power House, (1) V.Asokan (Electrician), (2) P.Rajan (Electrician), (3) P.P.Krishnan (Mechanic and Fitter), (4) K.P.Venugopal (Turner-cum-Welder), (5) P.Velayudhan (Blacksmith, Welding and Machine Maintenance work), (6) K.P.Krishnan (Blacksmith, Welding and Machine Maintenance work), (7) P.P.Kunhan (Blacksmith, Welding and Machanic Maintenance work)".

Is it the entitlement that was referred? Or was it the refusal and attendant reliefs that were referred to? Whatever it be, it is not within the province of the Industrial Tribunal to hold that the four persons to whom relief was granted were entitled to a particular grade from a particular point of time i.e. with monetary arrears from 1.7.1985 when there was no material which could form the rational basis to enter any such finding.

9. For the aforesaid reasons, I am satisfied that the impugned award in so far as it is against the management is vitiated and unsustainable in law.

10. In the result, O.P. No.15252/1996 is dismissed and O.P. No.13996/1996 is allowed quashing Ext.P1 award. No costs.

THOTTATHIL B. RADHAKRISHNAN
Judge

pms